



United States
Department of
Agriculture

Food and
Consumer
Service

Mountain
Plains
Region

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PJ

DEC 06 1995

Reply to
Attn. of: SP-96-05

Subject: Guidance - School Meals Initiative for Healthy Children for the
National School Lunch and Breakfast Programs

To: STATE AGENCY DIRECTORS - Colorado ED, Iowa, Kansas, Missouri ED,
(Child Nutrition Programs) Montana OPI, Nebraska ED, North Dakota,
South Dakota, Utah and Wyoming ED

A correction docket to the Federal Register dated November 14, 1995, for the School Meals Initiative (SMI) for Healthy Children final rule and related SMI guidance pieces are attached. Please review these materials and take appropriate action to comply with the guidance as prescribed.

1. Federal Register Correction Docket: The correction docket for the June 13, 1995, SMI final rule was published November 14, 1995, and makes only minor changes to the final regulation for clarity as noted in Attachment 1.
2. SMI Questions and Answers: Answers to state and regional questions related to SMI are outlined in Attachment 2. The Food and Consumer Service (FCS) will periodically provide you with responses to commonly asked questions and answers. At this time, FCS is not responding to any questions about monitoring the nutrition standards and the relationship of that monitoring to the Coordinated Review Effort. A panel of representatives from State agencies and Regional Offices will develop guidance on the specifics on the monitoring requirements. The questions submitted on this topic will provide FCS with the areas that should be discussed with the panel at a later point in time.
3. Guidance on Waivers for Implementation of Nutrition Standards: Attachment 3 contains general information on the criteria for authorizing schools to delay compliance with the nutrition standards and Dietary Guidelines until July 1, 1998.
4. National School Lunch Program - Compliance with Nutrition Standards: Guidance is provided under Attachment 4 on the waiver provision for the weighting requirement. Analysts may use a simple average of the items offered on the menu until July 1, 1998. The two-year waiver will provide an opportunity for FCS to evaluate the feasibility of using simple averages to determine compliance with nutrition standards.

STATE AGENCY DIRECTORS

5. Prioritizing Evaluations of Nutrition Compliance in the National School Lunch Program: Attachment 5 outlines the steps states shall take to document the status of the school's compliance with the nutrition standards when menus have been developed following the current meal pattern.

Please contact Child Nutrition Programs, Special Projects Section, at (303) 844-0355 if you have questions regarding these materials.



DAVID B. ALSPACH
Regional Administrator
Mountain Plains Region

Attachments

cc: Colorado DPHE, Colorado HS, Missouri DH, Montana DPHHS, Nebraska SS,
and Wyoming DHSS

Program and School Breakfast Program:
School Meals Initiative for Healthy
Children.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mr.
Robert M. Eadie, Chief, Policy and
Program Development Branch, Child
Nutrition Division, Food and Consumer
Service, USDA, 3101 Park Center Drive,
Alexandria, Virginia, 22302; by
telephone at 703-305-2620.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1995, the Department published a final rule incorporating provisions from proposals published on June 10, 1994, and January 27, 1995. The final rule implemented provisions of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, requiring that a variety of meal planning approaches be made available to school food authorities, including "food-based menu systems," and that school meals comply with the *Dietary Guidelines for Americans*. In addition, the final rule contained provisions to streamline the administration of the school meal programs. However, the final rule, as published, contained errors in the regulatory text that need correction.

Correction of Publication

Accordingly, the publication on June 13, 1995, is corrected as follows:

§ 210.10 [Corrected]

1. On page 31209, § 210.10, in the table entitled "MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES/ NUTRIENT ANALYSIS (SCHOOL WEEK AVERAGES)", in the first column, line 4, "RDA for protein" is corrected to read "RDA for protein (g)".

2. On page 31212, the table in § 210.10(k)(2) is corrected by adding a column containing an option for kindergarten through grade 3 which was inadvertently omitted. The entire table is republished for the convenience of readers.

Food and Consumer Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: School Meals Initiative for Healthy Children: Correction

AGENCY: Food and Consumer Service,
USDA.

ACTION: Final rule; correction.

SUMMARY: The Food and Consumer Service is correcting errors in the regulatory text of the final rule published on June 13, 1995, (60 FR 31188) entitled National School Lunch

Meal component	Minimum quantities required for				Option for
	Ages 1-2	Preschool	Grades K-6	Grades 7-12	K-Grade 3
Milk (as a beverage)	6 Ounces	6 Ounces	8 Ounces	8 Ounces	8 Ounces.
Meat or Meat Alternate (quantity of the edible portion as served)					
Lean meat, poultry or fish	1 Oz	1½ Oz	2 Oz	2 Oz	1½ Oz.
Cheese	1 Oz	1½ Oz	2 Oz	2 Oz	1½ Oz.
Large egg	½	¾	1	1	¾.
Cooked dry beans or peas	¼ Cup	¾ Cup	½ Cup	½ Cup	¾ Cup.
Peanut butter or other nut or seed butters	2 Tbsp	3 Tbsp	4 Tbsp	4 Tbsp	3 Tbsp.

Meal component	Minimum quantities required for				Option for
	Ages 1-2	Preschool	Grades K-6	Grades 7-12	K-Grade 3
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: Peanuts, soybeans, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds=1 ounce of cooked lean meat, poultry or fish.).	1/2 oz.=50% ...	3/4 Oz.=50% ..	1 Oz.=50%	1 Oz.=50%	3/4 Oz.=50%.
Vegetables/Fruits (2 or more servings of vegetables or fruits or both).	1/2 Cup	1/2 Cup	3/4 Cup plus extra 1/2 Cup over a week ¹ .	1 Cup	3/4 Cup.
Grains/Breads Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or 1/2 cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 servings per week—minimum of 1/2 per day ¹ .	8 servings per week—minimum of 1 per day ¹ .	12 servings per week—minimum of 1 per day ^{1,2} .	15 servings per week—minimum of 1 per day ^{1,2} .	10 servings per week—minimum of 1 per day. ^{1,2}

¹ For the purposes of this chart, a week equals five days.

² Up to one grains/breads serving per day may be a dessert.

3. On page 31215, in the second column, the amendatory language item 13.a. is corrected to read "The introductory text of paragraph (c) is amended by removing the phrase '4-year review cycle' wherever it appears in the first sentence and adding in its place the phrase '5-year review cycle' and by removing the date '1997' in the second sentence and adding in its place the date '1998'".

"nutrient sand" is corrected to read "nutrients and".

Dated: October 30, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95-28025 Filed 11-13-95; 8:45 am]

BILLING CODE 3410-30-P

§ 210.19 [Corrected]

4. On page 31216, in the first column, in § 210.19(a)(1)(i), last line, "§ 210.10(b) and § 210.10(c)" is corrected to read "§ 210.10(b) and the appropriate calorie and nutrient levels in § 210.10(c) or § 210.10(i)(1), whichever is applicable".

5. On page 31216, in the first column, in § 210.19(a)(1)(ii)(A), lines 5 and 6, "§ 220.8(e) or § 220.8(f)" is corrected to read "§ 220.8(g)".

§ 220.2 [Corrected]

6. On page 31217, in the first column, in § 220.2(m), line 19, "under the offer versus serve" is corrected to read "under offer versus serve".

§ 220.3 [Corrected]

7. On page 31219, in the second column, in § 220.8(e)(2)(ii), the phrase "senior high" is removed from lines 5 and 6 in the second sentence, and the third and fifth sentences are removed.

8. On page 31219, in the third column, in § 220.8(e)(5)(iii), line 7, "in accordance to" is corrected to read "in accordance with".

9. On page 31219, in the third column, in § 220.8(e)(7), line 3, "paragraph" is corrected to read "paragraphs".

10. On page 31220, in the first column, in § 220.8(e)(11), line 20,

SMI INITIATIVE - SET # 1: QUESTIONS AND ANSWERS ON JUNE 13, 1995, FINAL REGULATION

IMPLEMENTATION

1. When can school food authorities (SFAs) begin to implement the Nutrient Standard Menu Planning (NuMenus) alternative?

Final regulations may be implemented at any time after the effective date. However, while there are no regulatory requirements for State agencies to evaluate the readiness or ability of SFAs to conduct NuMenus, they should make SFAs aware that there are a number of factors that need to be considered in determining if they are properly prepared to do NuMenus, including use of approved software, familiarity with the software, development of standardized recipes, etc. In addition, SFAs should be advised that training and technical assistance are important aspects of implementing the NuMenus alternative and that USDA and the State Agency will be conducting training and providing technical assistance.

2. When can the edit check provisions be implemented?

SFAs that had no counting or claiming errors during their most recent Coordinated Review Effort (CRE) or Federal review may implement the provisions at any time.

3. Can schools implement the option, under the food-based menu planning alternative, to credit a dessert as a grain/bread item without implementing the other revisions?

No; the option of crediting a dessert as a grain/bread item only applies with the increased portion sizes required under the food-based menu planning alternative.

4. For SFAs not scheduled for an administrative review in School Year (SY) 1995-96 that implement one of the three new menu planning alternatives, do State agencies need to monitor these SFAs or simply provide technical assistance?

While State agencies do have overall responsibility to ensure proper program operations including implementation of new provisions, the regulations do not require them to monitor implementation of the new menu planning alternatives at each SFA. They should provide technical assistance to help SFAs start-up.

5. For SFAs scheduled for an administrative review in SY 1995-96 that implement one of the three new menu planning alternatives, do State agencies need to monitor these SFAs or simply provide technical assistance?

State agencies would conduct a review following all the requirements for CRE; however, for purposes of Performance Standard 2, the review would be based on the requirements for the menu planning alternative used by the school, and any technical assistance needed to assure that the alternative was properly implemented would be provided. While no violation would be cited for failure to meet the nutrition standards in §210.10 (b) and (c) or the requirements in §210.10 (i), (j) or (k) of the menu planning alternative selected by the SFA, the State Agency would cite for any other applicable violations specified in §210.18, such as unavailability of milk, failure to offer the appropriate number of components, or inaccurate meal counts. Also, as explained in recent guidance, State agencies have a great deal of flexibility in scheduling reviews during implementation of the new menu planning alternatives.

6. Must schools begin compliance with the Dietary Guidelines and other nutrition standards on July 1, 1996?

The law requires that schools serve meals that comply with the updated nutrition standards by the first day of the 1996/1997 school year, unless the State Agency has authorized a waiver. Schools that have begun serving meals at the start of the school year using one of the three menu planning alternatives provided in the regulations would be in compliance with the law. Under the regulations, there is no penalty, however, if meals do not meet the exact requirements of the Dietary Guidelines at that time. The regulations reflect the Department's belief that compliance with the new standards may be an incremental process achieved through trial and error over a period of time.

7. If a SFA receives a waiver to implement in SY 1998-99, can they start at anytime during that SY or must they begin on July 1, 1998?

The law does not permit waivers beyond July 1, 1998. (Also see #6.)

NUTRITION STANDARDS

1. Should schools wait to implement the revised 1995 Dietary Guidelines or use the current 1990 ones?

As stated on page 31193 of the preamble, the law requires compliance with the most recent Dietary Guidelines which are

currently the 1990 version. The preamble also states that the Department will revise the nutrition standards as necessary to incorporate appropriate updates to the Dietary Guideline recommendations. Schools will not be expected to implement revised Dietary Guidelines without implementing regulations.

2. Do the nutrition standards apply to children under age 2?

As stated in the introductory text to §210.10(b), the Dietary Guidelines and, therefore, the revised nutrition standards apply to children age 2 and above. SFAs will continue to follow the meal patterns for children under age 2, regardless of the menu planning alternative chosen for other age groups.

MENU PLANNING ALTERNATIVES-GENERAL

1. Can different menu planning alternatives be used within the SFA?

Yes; although when making this decision, SFAs should keep in mind that maintaining different systems may not be sustainable from an administrative standpoint over time.

2. Can different menu planning alternatives be used within a school?

No, generally there would be no way to maintain the nutritional integrity of the meal service if more than one system was used. In addition, multiple systems would require extensive record-keeping. However, under special circumstances when separate and distinct student populations exist in a single building, different menu planning approaches may be used.

3. Do the Appendices apply to NuMenus and Assisted NuMenus or just to the food-based alternative?

The Appendices do apply to the food-based alternative. Guidance on the application of the Appendices to NuMenus and Assisted NuMenus will be provided by FCS.

4. Are there changes under any of the menu planning alternatives for meals served to adults and preschool children in the Child and Adult Care Food Program (CACFP)?

Instructions for adult and preschool meals are included in the training materials and approved software.

There are no changes in the minimum portion sizes under the food-based menu planning alternative for preschool children. For preschool children age 2 and above, the minimum calorie and nutrient levels are provided in the regulation.

5. Are there changes under any of the menu planning alternatives for snacks for adults and preschool children?

There are no changes to the requirements for snacks under any of the menu planning alternatives.

NUTRIENT STANDARD MENU PLANNING

1. The definition of "menu item" states that "All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards..." (emphasis added). The use of the word "may" instead of "shall" implies that not all items would be counted. How is this to be interpreted?

Because the rest of the sentence excludes food of minimal nutritional value as contributing to a reimbursable meal, the word "may" was used. In other words, all menu items or foods offered shall be considered as part of the reimbursable meal except for foods of minimum nutritional value not served as part of another menu item or food.

2. How will a la carte items be considered for weighting and production records?

Items sold a la carte are not included in the analysis. For items offered as part of a reimbursable meal and also sold a la carte, the SFA must estimate the number of portions offered as part of the reimbursable meal. A periodic count at the point of service could be done to verify the relationship of reimbursable meals to a la carte sales, but it is not part of the regulatory requirement.

3. How will meals to teachers, food service staff and other adults in schools be considered for weighting and production records?

These adult meals should be treated in the same manner as a la carte meals. However, adult meals that are essentially the same as student meals need not be excluded from the nutritional analysis if that is more convenient for the SFA.

4. Can a school using NuMenus vend meals to the CACFP, the Summer Food Service Program (SFSP) or to other programs using NuMenus?

As noted on page 31206 of the preamble, the school may use NuMenus for vended meals as long as the entity receiving the meals agrees. For the purposes of other child nutrition programs, the entity contracting to receive meals needs the approval of their State Agency to have meals planned using the nutrient analysis approach.

5. Are there any minimum serving sizes for milk under NuMenus/Assisted NuMenus?

No.

6. Can schools use unapproved software until "official" implementation?

When an SFA or school implements the revised nutrition standards (i.e., the Dietary Guidelines and minimum nutrient levels) by using NuMenus, approved software must be used. The reasons for requiring use of approved software are provided on pages 31195-6 of the preamble. Schools that use the food-based alternative, but also choose to conduct a nutrient analysis, can use any software they like. However, they should be cautioned that unapproved software may not provide equivalent nutritional analysis and, as a consequence, may be misleading and provide different results from the State-conducted analysis required by the rule.

7. Are separate analyses for lunch and breakfast needed if the SFA is combining analyses to determine compliance with the nutrition standards?

No.

8. Is the third menu item (one being the entree and two being milk) at SFA discretion based on the nutrient analysis?

Yes; the initial nutrient analysis may suggest what item(s) would be appropriate to meet the calorie and nutrient levels.

FOOD-BASED MENU PLANNING ALTERNATIVE

1. For the kindergarten-grade 6 grouping, must the additional 1/2 cup of fruits/vegetables be served as part of that component or can the school/SFA show, through production records, that an additional amount was provided with the entree?

The additional serving may be provided as either an additional portion of the fruit/vegetable component or may be incorporated into the menu as part of another component. As is currently the case, the production records would indicate how the minimum portion size was met.

2. Will fruit/vegetable items need to meet a 1/8 cup minimum serving in order to be counted?

As is currently required, a minimum serving of 1/8 cup (two tablespoons) must be served.

3. Must schools with kindergarten through grade 8 use two grade groupings or do they have the option of using the larger portion sizes for grades 7-12 for all students?

While the portion sizes are minimum levels, schools need to keep in mind that, they were developed to provide, as nearly as possible, the appropriate amounts of nutrients by age/grade group.

We cannot promote too strongly the use of applicable portion sizes.

*First, the younger children would not be offered meals that provide the proper nutritional balance for their grade group, particularly in calories and the requisite levels of calories from fat. The result is "overnutrition" for these children which may contribute to childhood obesity and other health problems.

*Second, as discussed further in the next question, the percentages of fat from calories may be technically met for the younger children because the percentages are based on the calories offered. However, in actuality, the levels of fat exceed the ideal levels for younger children.

*Third, using larger portion sizes for the lower grades will increase costs. In developing the cost analysis for the rule, we assumed that SFAs and schools would use the appropriate portions for younger children. It is unlikely that cost-neutrality can be attained if the age/grade groupings are not observed.

4. If an SFA has middle schools with grades 6, 7, and 8 and chooses to use levels for grades 7-12, wouldn't the meals perhaps exceed the fat levels for the 6th graders?

The percentages of fat are determined on the actual number of calories offered, not the minimum requirement for the grade group. For example, the minimum calorie levels for 6th graders is 664, with maximum calories from fat as 199 and from saturated fat as 66. The minimum calories actually offered to 6th graders, in this case, would be 825, making the fat and saturated fat calories 248 and 83, respectively. Technically, however, the percentages of calories from fat would be met. In reality, however, the younger children would not be offered meals with the proper nutritional balance for their grade group in terms of all nutrients, particularly calories and the percentages of calories from fat and saturated fat.

We can only reiterate our strong commitment to meeting the appropriate nutrient levels by grade groups for reasons discussed in the preceding answer.

5. How will the minimum weekly quantities for the fruits/vegetables and grains/breads components be met for institutions that operate 7 days?

They would need to make proportional increases to reflect the two added serving days.

6. For the additional weekly quantities for the fruits/vegetables and grains/breads components, how will weeks with fewer than 5 serving days be handled?

As is done currently, the additional weekly quantities would be prorated over the actual number of serving days.

7. Full-strength fruit or vegetable juice may count towards not more than one-half of vegetable/fruit requirement. Does this requirement apply to the additional 1/2 cup of vegetables/fruits for children in grades K-6?

As is the current policy, only one half of the daily and weekly minimums may be met with full-strength juices.

8. What types of desserts may be credited as part of the grain/bread component?

We are currently revising our guidance to clarify what types of items may be credited.

OFFER VERSUS SERVE (OVS)

1. Will OVS be extended to meals prepared by schools using NuMenus for the CACFP and/or the SFSP?

There is no change to our current policy in this regard. OVS is not permissible in either the CACFP or the SFSP.

2. If a student requests reduced sized servings under OVS, is the meal still reimbursable?

Yes, it is a long-standing policy that a student may request smaller portions of any items she/he would otherwise decline. This policy continues to apply under all of the new menu planning alternatives.

3. Is there always a maximum of two items that may be declined, even if more than five items are offered as part of the reimbursable meal?

Yes.

4. Under NuMenus, in schools with multiple choices of entrees and

menu items, the regulations imply that a student would have to take up to 10 items, if for example, 12 were offered. Does this mean that schools will need to define what a reimbursable meal is; i.e., entree, milk and other items not to exceed, say, four?

As may happen currently, if different entrees, vegetables, bread items, etc. are offered, a number of combinations of menu items are possible to make up a reimbursable meal. The menu planner would need to describe what constitutes a reimbursable meal.

For NuMenus, without OVS, a reimbursable meal must include an entree, milk and at least one other menu item. Therefore, for a point of service count, a cashier would need to confirm that one of the variety of entrees was taken, milk, and one or more other menu items from the variety offered. Under OVS, the regulations require students to take an entree and allow them to decline up to two menu items if four or more are offered.

5. Is an entree required under OVS for the food-based menu planning alternative?

No. The term entree has applicability only to NuMenus and Assisted NuMenus.

ADMINISTRATIVE STREAMLINING

1. What constitutes "no counting and claiming violations" for the purposes of edit checks? Is there a tolerance?

If no violations are cited or if there are no systemic problems, the SFA would be considered to have no violations for the purposes of edit checks. There is no tolerance level for this provision as a "tolerance level" is built into the CRE system.

2. What information should be included in the production records for future State Agency review?

The SFA needs to retain enough information to either allow the State Agency to conduct its own nutrient analysis or to review the SFAs analysis to determine if it was correctly done.

3. Please tell us exactly what changes were made concerning non-profit status and the associated record-keeping.

No change was made to the requirement that the SFA must be non-profit. However, the regulations no longer specify which records must be maintained to document compliance.

4. Can a State Agency conduct CRE reviews more frequently than every 5 years?

Yes.

5. When may State agencies begin the 5-year CRE cycle?

The current CRE cycle has been extended by 1 year and will end on June 30, 1998.

GUIDANCE ON WAIVERS FOR IMPLEMENTATION OF NUTRITION STANDARDS

Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994, requires school meals to comply with the Dietary Guidelines for Americans (Dietary Guidelines) by School Year 1996/1997. However, the law also allows State agencies to temporarily waive implementation of this requirement until July 1, 1998. While some school food authorities (SFAs) or schools may need this additional time to make the transition to the Dietary Guidelines, we must stress that implementing the Dietary Guidelines as soon as possible is in the best interests of the students we serve.

The June 13, 1995, final regulation on the School Meals Initiative for Healthy Children indicated that the Department would provide guidance to assist states in implementing the waiver authority. The Food and Consumer Service (FCS) believes that the following information will help promote continuity among states and ensure uniform application of the statutory provision.

While the law provides State agencies with the responsibility and the authority to grant waivers, it requires that the waivers be based on criteria established by each State Agency. Therefore, SFAs seeking waivers to delay implementation of the regulatory requirements would need to meet the criteria prescribed by the State. The process by which a SFA requests a waiver and the procedure for considering the waiver rests solely with each State Agency. The criteria for granting a waiver may include the need for:

- . Training on proper menu planning techniques to implement the Dietary Guidelines;
- . Additional time to procure appropriate equipment including computer systems;
- . Renegotiation of a food service management company contract; or
- . Rebidding for food products.

The law requires that schools serve meals that comply with the updated nutrition standards by the start of the 1996/1997 school year, unless the State has authorized a waiver. Schools that have begun serving meals at the start of the school year using one of the three menu planning alternatives provided in the regulations would be in compliance with the law. The FCS recognizes that because SFAs cannot control individual choices by students, meals chosen by students may not initially meet the requirements of the Dietary Guidelines. The regulations reflect the fact that compliance with the new standards may be an incremental process achieved through trial and effort over a period of time. The FCS also wishes to emphasize that there are no fiscal sanctions if a school is unable to meet the nutrition standards. Rather, there is a system of cooperative corrective action to promote progress toward compliance.

NATIONAL SCHOOL LUNCH PROGRAM: COMPLIANCE WITH NUTRITION STANDARDS

The final regulation on the School Meals Initiative for Healthy Children requires that, when nutrient analysis is performed, a weighted analysis of the foods produced must be used. The analysis helps schools prepare healthier meals that are low in fat and provide appropriate levels of calories and nutrients. This initiative implements requirements established by Congress with the passage of Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994. The law requires that schools serve meals that comply with the Dietary Guidelines and meet nutrition standards established by the U.S. Department of Agriculture.

The weighted nutrient analysis requirement applies to schools electing to perform their own analyses under Nutrient Standard Menu Planning (NuMenus), to State agencies and other outside entities performing the analysis for schools under Assisted NuMenus and to State agencies performing analysis as part of their reviews of schools electing to use the food-based alternative. The Department wishes to make the transition to the updated menu planning methods and healthier meals as smooth as possible and is exploring every avenue that can promote sound nutrition while minimizing administrative burdens.

Therefore, as Secretary of Agriculture Dan Glickman stated in his October 13, 1995, letters to members of Congress and American School Food Service Association President Penny McConnell, the weighting requirement of nutrient analysis will be temporarily waived if the State requests such a waiver and the waiver application meets the waiver criteria of Public Law 103-448. This waiver may be granted for up to 3 years and extended. These requests will be acted upon promptly. This waiver of the weighting requirement will provide time to gain further experience with the menu planning pilot projects. It will also allow time to design a method to evaluate the impact of using simple averages rather than weighted averages. We expect the pilot projects to be completed and evaluated by the start of the 1998/1999 school year. Therefore, this waiver of the weighted analysis is in effect until July 1, 1998. If more time is deemed necessary at that date, this waiver may be extended.

States wishing to exercise this option must submit a formal request for waiver authority to their regional offices. The waiver request is subject to the requirements established by P.L. 103-448. Guidance on compliance with the statutory requirements was distributed in SP-95-10 dated April 19, 1995. For your convenience, a copy of the waiver guidance is included in this attachment.

The Department will continue to work with states to provide materials and assistance to local schools through Team Nutrition.

STATUTORY AND REGULATORY WAIVERS IN THE CHILD NUTRITION PROGRAMS

Statutory Authority

Section 112(d) of the Healthy Meals for Healthy Americans Act of 1994 (Public Law 103-448), enacted on November 2, 1994, amended Section 12 of the National School Lunch Act to give the Secretary of Agriculture authority to waive certain statutory and regulatory provisions which govern the Child Nutrition Programs.

Pre-application Considerations

Eligibility - The Law requires that applications for waivers may be made by State agencies which administer the Child Nutrition Programs (including Food and Consumer Service Regional Offices that operate ROAP programs) either for themselves or on behalf of local entities which are participating in the Child Nutrition Programs.

General Considerations - When deciding whether or not to submit a specific waiver request, State agencies and local entities should keep in mind that the Department will be guided by its understanding of specific statutory provisions which govern the waiver provisions, as well as the Congressional intent which supports them. As stated in House Report 103-535, which accompanied H.R. 8 during its consideration by the Congress, the former House Committee on Education and Labor believed that Federal assistance for Child Nutrition Programs should be provided in a way which permits flexibility in the implementation of the those Programs and which eliminates unnecessary administrative burdens, paperwork, and overly prescriptive regulations. However, the Committee indicated that there should be certain requirements for waivers including: the facilitation of program administration and benefit delivery; appropriate public notification; and no increase in the Federal cost of the program. Consistent with that intent, and in recognition of the burden on all levels of program administration associated with these waiver requests, the Department will review all submissions for their demonstrable benefit to State and local program administrators and program beneficiaries and for their consistency with Congressional intent.

State Involvement in Local Agency Applications - When a State agency is submitting a waiver request on behalf of a local entity, the Department views the State agency role as both a facilitator and a collaborator. In this role, the State agency is expected not only to give advice and technical assistance to the local entity, if necessary, but also to approve its waiver request as being consonant with the spirit and letter of the law. State agencies should not submit waiver requests on behalf of local entities if they cannot fully support them or if they believe them to be inconsistent with statutory intent.

Consultation with Regional Offices - State agencies are encouraged to consult with their Food and Consumer Service Regional Office when considering waiver applications.

Public Notification - State agencies and local entities are required by the Law to provide public notification of their intent to seek specific waivers, as well as notification of the Department's decisions with regard to waiver applications within the State. Such notice and information must be provided in the same manner in which the State agency or local entity normally provides similar notices and information to the public.

State and Local Reporting - Local entities that receive a waiver must annually submit to the State agency a report which describes how they are using the waivers and evaluates, where applicable, how the waiver has contributed to improved services to program participants; the impact of the waivers on providing nutritional meals to participants; and how the waivers have reduced the quantity of paperwork necessary to administer the program. In addition, State agencies must submit an annual report to the Department that summarizes all waiver activity within the State and describes whether waivers resulted in improved services to children and adults; the impact on providing nutritional meals to participants; and how they reduced the quantity of paperwork necessary to administer the program.

Duration of Waivers - The Department may only grant waivers for a period not to exceed 3 years. However, the Department may extend the authority for a waiver beyond the 3-year period if it determines that the waiver has been effective in enabling the State or local entity to carry out the purposes of the program.

Application Procedures

Applications for waivers under section 12(l) of the National School Lunch Act should be forwarded by State agencies to the Director, Child Nutrition Programs in their Food and Consumer Service Regional Office. Food and Consumer Service Regional Offices are responsible for reviewing waiver applications and forwarding them to the Director of the Child Nutrition Division along with their evaluation of the applications and recommendations for approval or denial.

Content of Applications

Waiver applications should be in narrative form and written as concisely as possible. In no case should an application exceed 10 pages in length. Applications should follow the structure set out below and, at a minimum, contain the following:

Part A - Identification of the State agency and, if applicable, identification of the local entity for which the waiver is being sought, including its name and address, the Child Nutrition Program(s) in which it participates, and a general description of the size and scope of its program.

Part B - Identification/description of the specific statutory or regulatory requirements for which the waiver is being sought, including the applicable citations (e.g., section 13(a)(7)(B)(ii) of the National School Lunch Act; 7 CFR Part 210.20(b)(11)).

Part C - A description of the impediments to the efficient operation and administration of the program that caused the waiver to be sought.

Part D - A description of actions that the State has undertaken to remove any State-level barriers (either statutory or regulatory) to achieve the result sought under the waiver. If not applicable, that should be indicated.

Part E - A description of the State's expectation as to how the waiver will improve services and the expected outcomes if the waiver is granted.

Part F - A description of the management goals to be achieved under the proposed waiver (e.g., specific saving of time, fewer personnel required to administer the program, etc.).

Part G - A description of the State's plan for implementing the program change envisioned under the waiver, including a timetable for implementation.

Part H - A description of the process to be used by the State and, if applicable, the local entity to monitor the implementation, operation and progress of the change resulting from the waiver, including the process for monitoring the waiver's cost to the Federal government.

Part I - A description of funding source(s) to be used to offset any additional costs resulting from the implementation of the waiver, if applicable.

Part J - A description of the process used by the State and, if applicable, the local entity to provide notice and information to the public regarding the proposed waiver and a certification that such notice has been provided in the same manner customarily used by the State or local entity to provide similar notices and information to the public.

Waiver Limitations

When considering a waiver request submission, State agencies and service providers should be guided by the limitations on waivers imposed in the statute. In this regard, the Department is not permitted to waive any current statutory or regulatory requirements related to:

- * the nutritional content of meals;
- * offer versus serve;
- * the individual entitlement to free and reduced price meals;
- * the maximum amount charged for a reduced price meal;
- * Federal reimbursement rates;
- * the distribution of program funds to State and local entities participating in the Child Nutrition Programs;
- * the equitable participation of private schools and the children attending private schools;
- * the maintenance of effort by States;
- * the disclosure of information relating to students receiving free or reduced price meals and other recipients of benefits;
- * the commodity distribution program under section 14 of the National School Lunch Act;
- * the maintenance of non-profit food service operations;
- * the sale of competitive foods; and
- * enforcement of any individual rights established under the Constitution of the United States and Federal statutes.

Responsibilities of the Department

The Department will promptly inform State agencies in writing the reasons for granting or denying requests.

The Department will periodically review the performance of any State agency or local entity operating under a waiver. If such performance has been inadequate, the Department will terminate the waiver authority. Likewise, the Department will terminate a waiver if it is determined that it has resulted in an increase in the program's cost to the Federal government.

The Department will submit an annual report to the Congress which summarizes the use of waivers by State agencies and local entities; describes whether the waivers resulted in improved services to children; describes the impact of the waivers on providing nutritional meals to participants; and describes how the waivers reduced the quantity of paperwork necessary to administer the program.

PRIORITIZING EVALUATIONS OF NUTRITION COMPLIANCE IN THE NATIONAL SCHOOL LUNCH PROGRAM

The goal of the recently issued regulation, School Meals Initiative for Healthy Children, is to improve the health of school children by enhancing the nutritional value of school meals and ensuring that school meals meet the Dietary Guidelines for Americans. Documentation of compliance with nutrition standards is central to ascertaining whether the goal has been met. However, the Food and Consumer Service (FCS) recognizes the need for flexibility in implementing the new menu planning systems, particularly Assisted Nutrient Standard Menu Planning (NuMenus).

In some instances, schools believe they are currently meeting the nutrition standards using menus developed under the old meal patterns. However, they may be unable to provide documentation of this fact because they have not done an analysis or do not have access to an outside entity capable of performing nutrient analysis and confirming that the school's meals meet the nutrition standards. In these instances, schools may advise the State Agency that they are in compliance with the nutrition standards even though they cannot document this fact at that time. Secretary of Agriculture Dan Glickman clarified that this flexibility exists under Assisted NuMenus in his October 13, 1995, letter to members of Congress and American School Food Service Association President Penny McConnell.

In these situations, we urge each State Agency to make every effort to document the status of the school's compliance with the nutrition standards. At a minimum, states should encourage schools to provide justification for why they believe they are in compliance with the nutrition standards. If possible, states should conduct a nutrient analysis themselves or contract with consultants to do so. If this option is not feasible, we strongly encourage states to prioritize their reviews so that these schools are evaluated and the nutrition analysis conducted within the first 2 years of implementation.

The Food and Consumer Service recognizes that the prioritization of the evaluation schedule may have a significant effect on a State's ability to efficiently manage its workload. Therefore, to alleviate any potential workload strains, FCS is prepared to provide additional flexibility in the scheduling of Coordinated Reviews. Under §210.18(c)(1), State agencies are required to conduct administrative reviews of all school food authorities at least once during each 5-year cycle; provided that each school food authority is reviewed at least once every 6 years. Section 210.18(c)(3) authorizes FCS, on an individual school food authority basis, to approve written request for 1-year extensions to the 6-year review interval if FCS determines this requirement conflicts with the efficient State Agency management of the Program.

Thus, for each of the first 2 years of the second Coordinated Review cycle, FCS will grant extensions to the 6-year review interval for as many school food authorities as needed in order to provide the State Agency with the

flexibility needed to efficiently manage its workload. To seek an extension, State agencies must submit a written request to the Regional Office, identifying the names of the school food authorities that will have delayed reviews, the reason for the request, and the school year for which the extension is requested. State agencies will be notified of the disposition of their request in writing.

We would like to take this opportunity to remind State agencies that the nutrition compliance requirements of §210.19(a)(1) are a State function. As such, §235.6(a-1) allows State Administrative Expense (SAE) funds to be used to pay salaries, expenses for administrative and supervisory personnel, for support services, for office equipment, and for staff development, particularly for monitoring and training of food service personnel at the local level in areas such as food purchasing and merchandizing, etc. Consistent with these uses, a State Agency could use SAE to contract with an independent contractor to conduct nutrition evaluations on behalf of the State Agency or to hire additional staff to perform such evaluations. Given the importance of nutrition compliance and the direct link it has to our nutrition goals, FCS will consider requests for funds for nutrition compliance activities for reallocation of SAE. Therefore, State agencies that need additional SAE funds to support implementation should request funds during the normal reallocation scheduled for the Spring of 1996. Further guidance will be provided at that time.

We are hopeful that these accommodations will help you to implement the School Meals Initiative for Healthy Children. We recognize that challenges lie ahead but we must keep our goal of improving the health of the Nation's children in sight as we move ahead.